

# Exhibit A

Page 1

1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF TEXAS

3 MARSHALL DIVISION

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6 CELLULAR COMMUNICATIONS )  
7 EQUIPMENT LLC, )  
8 Plaintiff, ) Civil Action  
9 vs. ) No. 2:20-cv-00078-JRG  
10 HMD GLOBAL OY, )  
11 Defendant. )  
12 \_\_\_\_\_ )

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14

15 DEPOSITION OF ANTHONY DeROSA

16 (Via videoconference)

17 December 18, 2020

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24 Reported by: John L. Harmonson, RPR

25 Job No. 187848

1  
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4  
5 December 18, 2020

6 9:00 a.m.

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9 Deposition of ANTHONY DeROSA, taken via  
10 videoconference with the witness and all parties  
11 appearing remotely, pursuant to the Federal Rules  
12 of Civil Procedure, by Notice, subject to such  
13 stipulations as may be recited herein or attached  
14 hereto, before John L. Harmonson, a Registered  
15 Professional Reporter and Notary Public of the  
16 State of Maryland, who officiated in  
17 administering the oath to the witness.

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25

1 A P P E A R A N C E S

2

3 On behalf of the Plaintiff:

4 BRAGALONE CONROY

5 2200 Ross Avenue

6 Dallas, TX 75201

7 (Via videoconference)

8

9 BY: JERRY TICE II, ESQ.

10 HUNTER PALMER, ESQ.

11

12 On behalf of the Defendant:

13 WARREN LEX

14 2261 Market Street

15 San Francisco, CA 94114

16 (Via videoconference)

17 BY: MATTHEW WARREN, ESQ.

18

19 ALSO PRESENT (via videoconference):

20 DONALD BREUWET, Legal Video Specialist

21

22

23

24

25

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1 A. DeROSA

2 -----

3 P R O C E E D I N G S

4 9:00 a.m.

5 -----

6 THE VIDEOGRAPHER: Good morning. This  
7 is the start of Media Number 1 for the video  
8 deposition of Anthony DeRosa, in the matter  
9 of Cellular Communications Equipment LLC v.  
10 HMD Global Oy, in the United States District  
11 Court for the Eastern District of Texas,  
12 Marshall Division, Case Number  
13 2:20-cv-00078.

14 Today's date is December 18, 2020.

15 The current time is 9:01. This deposition  
16 is being held remotely.

17 My name is Donald Breuwet. I'm the  
18 videographer in association with TSG  
19 Reporting.

20 Due to the severity of COVID-19 and  
21 following the practices of social  
22 distancing, I will not be in the same room  
23 with the witness. Instead, I will record  
24 his videotaped deposition remotely.

25 The reporter, John Harmonson, also

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A. DeROSA

will not be in the same room and will swear in the witness remotely.

11 THE WITNESS: Yes.

12 MR. WARREN: This is Matt Warren. I  
13 also stipulate.

14 MR. TICE: So stipulated.

18 (Whereupon, counsel placed their  
19 appearances on the video record.)

\* \* \*

21 Whereupon:

22                           ANTHONY DeROSA,  
23 after having been first duly sworn or affirmed,  
24 was examined and did testify under oath as  
25 follows:

1 A. DeROSA

2 8; is that correct?

3 A. That's correct.

4 Q. Okay. All right. How many hours did  
5 it take to prepare your opinions in Exhibit 2?

6 A. I couldn't tell you the exact number  
7 of hours, but it was on the order of four or  
8 five.

9 Q. Four or five hours. That includes  
10 review of the patent?

11 A. Yes.

12 Q. And how many hours did you spend to  
13 prepare for this deposition?

14 A. I spent most of yesterday.

15 Q. Eight hours?

16 A. Yes.

17 Q. More than eight hours?

18 A. No, it was exactly eight hours. I'm  
19 used to -- yes.

20 Q. I'm sorry. I didn't mean to interrupt  
21 you. Go ahead.

22 A. Keeping time is a very important  
23 aspect of my job as a consultant, and so I keep  
24 very accurate records of how long I spend, and I  
25 actually spent exactly eight hours yesterday.

1 A. DeROSA

2 Other than time spent preparing for  
3 your -- withdraw that.

4 Other than time spent preparing your  
5 declaration and time spent preparing for this  
6 deposition, you haven't done any billable work  
7 for this matter; is that correct?

8 A. That is correct.

9 Q. And the only non-billable work that  
10 you've done related to this matter is just  
11 reading a book about how to be a witness and  
12 isn't directly related to the substance of this  
13 matter; correct?

14 A. Correct.

15 Q. Okay. Did you write your declaration?

16 MR. TICE: Objection; form.

17 THE WITNESS: Excuse me?

18 BY MR. WARREN:

19 Q. Did you write your declaration?

20 MR. TICE: Same objection.

21 THE WITNESS: The opinions in the  
22 declaration are mine.

23 BY MR. WARREN:

24 Q. I understand that. I didn't ask that  
25 question.

1 A. DeROSA

2 Q. So let me stop you. I asked a bad  
3 question. It's my fault and I apologize.

4 Who in terms of human beings have you  
5 had conversations that include any substance  
6 regarding this engagement?

7 A. Just counsel. Just my counsel.

8 Q. What are their names?

9 A. Jerry Tice, Hunter Palmer, and Jeff  
10 Bragalone.

11 Q. So aside from Mr. Tice, Mr. Palmer,  
12 and Mr. Bragalone, have you had any substantive  
13 conversations with anybody about your engagement  
14 in this matter?

15 A. No.

16 Q. Except for me, of course.

17 When did you speak to Mr. Bragalone?

18 A. Yesterday.

19 Q. For how long?

20 A. A few hours. We were on a Zoom call.

21 MR. WARREN: Okay. All right. Let's  
22 take a ten-minute break.

23 THE WITNESS: Sounds good.

24 MR. WARREN: So we will come back  
25 at -- I can't even tell what time it is. We

1 A. DeROSA

2 will come back at five past the hour if  
3 that's okay with you.

4 THE WITNESS: Sounds good.

5 MR. WARREN: Thank you very much.

6 THE VIDEOGRAPHER: The time is 9:55.

7 We are off the record.

8 (Recess taken.)

9 THE VIDEOGRAPHER: The time is 10:08.

10 We are on the record.

11 BY MR. WARREN:

12 Q. Mr. DeRosa, welcome back.

13 Can you turn, please, to Paragraph 14  
14 of your declaration.

15 A. Yes.

16 Q. And in Paragraph 14 you state, quote:  
17 "In my opinion, a person of ordinary skill in the  
18 art of the subject matter of the '923 patent  
19 would have been a person having the equivalent of  
20 an undergraduate degree in computer science (or  
21 similar field) and approximately one year of work  
22 experience in the field of wireless  
23 communications. Additional education in the  
24 field could substitute for industry experience  
25 and vice versa."

1 A. DeROSA

2 Did I read that correctly?

3 A. Yes.

4 Q. And that was your opinion at the time  
5 of this declaration about the level of ordinary  
6 skill in the art of the subject matter of the  
7 '923 patent; correct?

8 A. Yes.

9 Q. And that remains your opinion today;  
10 correct?

11 A. Yes.

12 Q. How did you come to that opinion?

13 A. This kind of standard was suggested to  
14 me by counsel as it has been used in the past.  
15 And after, you know, considering the terms and  
16 the subject, the contents of the patent, I agreed  
17 that that seemed like a reasonable bar.

18 Q. Where was it used in the past?

19 A. I couldn't tell you offhand.

20 Q. Did you review any documents where  
21 this standard was used in the past?

22 A. Not in forming this opinion, no.

23 Q. That's not what I asked.

24 Did you review any documents where  
25 this standard was used in the past?

1 A. DeROSA

2 MR. TICE: Objection; form.

3 THE WITNESS: I believe I came across

4 something yesterday in an IPR. I

5 couldn't -- I don't remember which one or

6 how it was used, but I do remember seeing

7 that, something similar. I don't think it

8 was exactly the same exact standard, but it

9 was very similar, an undergraduate degree

10 with one or two years of experience,

11 something like that.

12 BY MR. WARREN:

13 Q. What is the process by which one

14 determines the level of ordinary skill in the art

15 for a particular patent?

16 A. What I did was consider what is the

17 subject matter, what are the topics in here, what

18 are the concepts involved, and what would you

19 kind of need to understand and make sense and

20 have a good understanding of what was claimed in

21 the patent.

22 Q. Are you aware of the legal standard

23 for determining the level of ordinary skill in

24 the art for a particular patent?

25 A. No.

1 A. DeROSA

2 Q. So you formed this opinion regarding  
3 the level of ordinary skill in the art by taking  
4 a suggestion given to you by counsel and  
5 evaluating it as to whether someone who met that  
6 standard could reasonably understand the '923  
7 patent; correct?

8 A. I took the suggestion, the suggested  
9 standard, and I evaluated it based on what I  
10 found in the patent, yes.

11 Q. Okay. So that wasn't quite what I  
12 asked. I thought I heard you say -- and correct  
13 me if I'm wrong. I thought I heard you say that  
14 in evaluating the standard that counsel suggested  
15 to you, you considered whether or not a person  
16 who met that standard of a person having ordinary  
17 skill in the art could understand the '923  
18 patent. Did I hear that correctly?

19 MR. TICE: Object to the form.

20 THE WITNESS: Specifically, in  
21 thinking in terms of that term, that  
22 "message of the messages."

23 BY MR. WARREN:

24 Q. So your opinion about the level of  
25 ordinary skill is based only on a message of the

1 A. DeROSA

2 messages and not on the whole patent?

3 MR. TICE: Objection; form.

4 THE WITNESS: No, I don't think that's

5 accurate.

6 BY MR. WARREN:

7 Q. Okay. Because it says, quote: "In my  
8 opinion, a person of ordinary skill in the art of  
9 the subject matter of the '923 patent would have  
10 been a person," dot, dot, dot, the stuff that I  
11 already read.

12 Do you see that?

13 A. Yes.

14 Q. So to me, this opinion is not cabined  
15 to a particular term. Do you agree with that?

16 A. Yes.

17 Q. This opinion relates to a person  
18 having ordinary skill in the art of the subject  
19 matter of the '923 patent; correct?

20 A. Yes.

21 Q. So what I'm trying to understand is I  
22 understand that counsel suggested this language  
23 to you. But you then said you evaluated it in  
24 some way. And I want to make sure I understand  
25 the way that you evaluated this language to reach

1 A. DeROSA

2 your opinion.

3 Do you understand the question that  
4 I'm asking?

5 A. Yes.

6 Q. Okay. So how did you evaluate the  
7 language that counsel suggested in order to reach  
8 your opinion that Paragraph 14 accurately  
9 describes a person of ordinary skill in the art  
10 of the subject matter of the '923 patent?

11 A. There wasn't a formal evaluation  
12 process. It's more of a -- based on my  
13 experience, based on what I knew when I was, you  
14 know, had an undergraduate degree and one year of  
15 experience and people that I know in those  
16 similar circumstances, would they be able to  
17 understand this patent. And it seems reasonable  
18 that they would be able to.

19 Q. And so your view is that a person of  
20 ordinary skill can understand the -- withdraw  
21 that.

22 Your view is that a person of ordinary  
23 skill in the art of the subject matter of the  
24 '923 patent can understand the '923 patent;  
25 correct?

1 A. DeROSA

2 A. Yes.

3 Q. And you are such a person; correct?

4 A. Yes.

5 Q. Okay. Let's look at Claim 1. And  
6 I'll direct you to Column 9 of the patent which  
7 is Exhibit 1.

8 Tell me when you're ready.

9 A. I'm ready.

10 Q. Claim 1 is a method claim; correct?

11 A. Yes.

12 Q. What's the difference between a method  
13 claim and an apparatus claim?

14 A. I don't know.

15 Q. Okay. Do you agree with me that to  
16 infringe a method claim, a person must have  
17 practiced all steps of the claimed method?

18 A. Can you repeat that question?

19 MR. WARREN: Mr. Reporter, can you  
20 read the question back, please.

21 (The record was read back by the  
22 reporter as follows:

23 "Question: Okay. Do you agree with  
24 me that to infringe a method claim, a person  
25 must have practiced all steps of the claimed

1 A. DeROSA

2 method?")

3 THE WITNESS: What do you mean by "all  
4 steps"?

5 BY MR. WARREN:

6 Q. What do you mean by all steps?

7 MR. TICE: Objection; form.

8 THE WITNESS: Where are you referring?

9 BY MR. WARREN:

10 Q. I'm not referring to anything. I'm  
11 asking you a question. Do you agree with me that  
12 to infringe a method claim, a person must  
13 practice all steps of the claimed method?

14 A. I'm not sure what you mean by "steps."

15 Q. Okay. When you look at the method  
16 claim, do you see that it has multiple steps,  
17 diverting, controlling, things like that?

18 A. Yes.

19 Q. Okay. And do you agree with me that  
20 to infringe a method claim, a person must have  
21 practiced all steps of the claimed method?

22 A. I don't think that's true.

23 Q. Okay. How is that not true?

24 A. I think it has to be one or more of  
25 the methods.

1 A. DeROSA

2 Q. So I could infringe Claim 1 by  
3 diverting a message of the messages to a  
4 controlling entity residing in the communication  
5 terminal but not, based on the message,  
6 controlling in the controlling entity whether the  
7 application program behaves in a predetermined  
8 manner in a communication terminal?

9 A. No, I guess that wouldn't make sense.  
10 I imagine you would have to do all of these here.

11 Q. Okay. So you do agree with me that to  
12 infringe a method claim a person must have  
13 practiced all steps of the claimed method?

14 A. Yes.

15 Q. Okay. Let's look at Claim 1. I want  
16 you to assume that a user has a communication  
17 terminal. Let me back up.

18 I'm going to now -- we're going to  
19 walk through Claim 1, and I'm going to use terms  
20 that appear in the patent. I mean for those  
21 terms to have the meaning that you understand  
22 them to have in the patent.

23 Do you understand that?

24 A. Okay.

25 Q. So I want you to assume that a user

1 A. DeROSA

2 has a communication terminal. Do you understand  
3 that?

4 A. Yes.

5 Q. And I want you to assume that that  
6 user uses the communication terminal to send a  
7 message from an application towards a  
8 communication network.

9 A. Okay.

10 Q. Do you understand that?

11 A. Yes.

12 Q. Okay. And the communication terminal  
13 then diverts that message to a controlling entity  
14 residing in the communication terminal.

15 Do you understand that?

16 A. I don't believe the user -- I don't  
17 believe this claim says the user diverts a  
18 message.

19 Q. I didn't say that.

20 MR. WARREN: Mr. Reporter, can you  
21 read back my question, please.

22 (The record was read back by the  
23 reporter as follows:

24 "Question: Okay. And the  
25 communication terminal then diverts that

1 A. DeROSA

2 message to a controlling entity residing in  
3 the communication terminal.

4 "Do you understand that?" )

5 THE WITNESS: Sorry. I misheard.

6 Yes.

7 BY MR. WARREN:

8 Q. Okay. And then based on the message,  
9 the controlling entity controls whether the  
10 application program behaves in a predetermined  
11 manner in a communication terminal, the  
12 controlling being performed before the message is  
13 transmitted from the communication terminal to  
14 the communication network.

15 Do you understand that?

16 A. Yes.

17 Q. Does that infringe Claim 1?

18 MR. TICE: Objection; form.

19 THE WITNESS: Does what infringe  
20 Claim 1?

21 BY MR. WARREN:

22 Q. The hypothetical that I've just given  
23 you.

24 A. Oh, if you have all of these?

25 Q. Yes.

1

A. DeROSA

2 A. Yes, I would -- I guess I would say

3 yes.

4 Q. Okay. Now, your construction of

5 this -- or I should say CCE's construction is one

6 or more but less than all of the messages;

7 correct?

8 A. Yes.

9 Q. Okay. So in my hypothetical, there

10 has only been one message. Do you understand

11 that?

12 A. Yes.

13 Q. Okay. And so your view is that even

14 though a message of the messages is properly

15 construed as one or more but less than all of the

16 messages, the hypothetical that I've given you

17 where a user uses a communication terminal to

18 send one message, that can infringe Claim 1;

19 correct?

20 A. I'm processing. Give me a second to

21 just think through the logic here.

22 So my understanding would be yes, if

23 there was a particular use case where an app sent

24 one message and it was diverted, then it would

25 fit the definition of one or more messages being

1

A. DeROSA

2 sent and would infringe the patent.

3 Q. So what does "less than all" mean?

4 Because in my hypothetical there is only one

5 message. So all of the messages are diverted.

6 So what does "less than all" mean in that case?

7 A. Well, if you're asking me a person of

8 ordinary skill in the art when reviewing this

9 patent, they I believe would understand the term

10 to mean one or more. And so they would

11 understand that to be infringing the patent.

12 Q. I apologize. Let me be clear. I am

13 now asking you about CCE's construction in this

14 case. Okay? We can talk a different time about

15 any other construction, but I am currently asking

16 you about CCE's construction in this case.

17 Do you understand that?

18 A. Yes.

19 Q. Under CCE's construction in this case,

20 if a user uses a communication terminal to send

21 one message and the communication terminal

22 diverts that message and then based on that

23 message controls whether the application behaves

24 in a predetermined manner, does that infringe

25 Claim 1?

1 A. DeROSA

2 A. I guess the thing I'm hesitating on

3 and thinking about is over what period of time.

4 Maybe the app that you've installed has only sent

5 one message, but maybe it will also send another

6 message tomorrow or the day after. So it would

7 make most sense to interpret what the app is

8 doing over time and not in any one particular

9 instance of time.

10 Q. Well, I appreciate that you would like

11 to answer a question other than the question that

12 I'm asking. But I'm asking the question that I'm

13 asking.

14 So the question that I'm asking is:

15 In my hypothetical where a user sends one

16 message, does that infringe Claim 1 under CCE's

17 construction? Yes, no, or I don't know?

18 A. I'm only hesitating or saying more

19 because I feel responsible to provide the court

20 with a full understanding of this term and I

21 guess I want to answer your questions in the most

22 helpful way.

23 So I'm just saying I would like you to

24 clarify the question. Did this app only send one

25 single message ever in the entire span of its

1 A. DeROSA

2 lifetime? Or are you saying since the app was  
3 installed? Or to date?

4 Do you understand what I'm asking?

5 Q. I understand what you're asking. I  
6 think I've been clear, but let me put it to you  
7 this way: The user sends one message, as we have  
8 discussed, and then decides that they hate the  
9 communication terminal and throws it in a  
10 dumpster fire. So only one message is ever sent.

11 A. I guess I would say a person reading  
12 this would interpret that as infringing on the  
13 patent based on the court's clarification and  
14 limitation of the "but not all." I can see how  
15 that would be kind of a special scenario.

16 Q. So you're answering a lot of questions  
17 that I'm not asking. Okay? I want you to  
18 understand. Until I tell you otherwise, I'm  
19 asking only about CCE's construction.

20 Do you understand that?

21 A. Yes.

22 Q. Okay. Under CCE's construction, if a  
23 user sends one message and one message only,  
24 okay, can that user infringe Claim 1?

25 MR. TICE: Objection; form.

1 A. DeROSA

2 THE WITNESS: No, I'm not sure that it  
3 would.

4 BY MR. WARREN:

5 Q. We need to get to certainty. So let  
6 me ask the question again.

7 Under CCE's construction, if a user  
8 sends one message and one message only, can that  
9 user infringe Claim 1?

10 MR. TICE: Objection; form.

11 THE WITNESS: No.

12 BY MR. WARREN:

13 Q. Okay. If a user sends two messages  
14 and they're both diverted, does that user  
15 infringe Claim 1?

16 A. And when you say a user sent two  
17 messages, you're saying those are the only  
18 messages the user ever sends with that app?

19 Q. Correct.

20 A. Because of the "but less than all"  
21 qualifier, then I would have to say no.

22 Q. So if a user sends two messages and  
23 neither of them is diverted, can that user  
24 infringe Claim 1?

25 A. I guess the answer depends on if those

1 A. DeROSA

2 messages -- if this was a particular case where  
3 those messages were not determined to be diverted  
4 because of the contents, or if there was never  
5 ever any diverting being done.

6 Q. So I'm not sure I understand what  
7 you're saying. So if a user -- we've established  
8 that if a user sends two messages and two  
9 messages only and they're both diverted, then  
10 under CCE's construction there is no  
11 infringement; correct?

12 A. Correct.

13 Q. If a user sends two messages and two  
14 messages only and neither one of them is  
15 diverted, is there infringement?

16 A. No, because of the "one or more."

17 Q. Okay. So if a user sends 6,000  
18 messages and they're all diverted, there is no  
19 infringement; correct?

20 A. If a user sends 6,000 and only 6,000  
21 and never sends another one, and all of them are  
22 diverted, then that would not infringe.

23 Q. So if a user sends 6,000 messages and  
24 none of them are diverted, that also would not  
25 infringe; correct?

1 A. DeROSA

2 A. Correct.

3 Q. If a user sends 6,000 messages and

4 they're all diverted, so far that user has not

5 infringed; correct?

6 A. Correct.

7 Q. If a user then sends message 6,001 and

8 that message is not diverted, is that message

9 infringing, or are all 6,001 messages now

10 infringing?

11 A. In this particular circumstance you're

12 saying the first 6,000 are diverted and then the

13 next one is not?

14 Q. That is what I'm saying.

15 A. Then it seems to fit the definition of

16 one or more but not all.

17 Q. And so does that mean that all 6,001

18 messages that the user sent are now retroactively

19 infringing?

20 A. Yes.

21 Q. How can a person of ordinary skill in

22 the art determine at any particular time whether

23 a user is infringing the patent?

24 A. It would require an analysis of the

25 behavior or a review of the source code or some

1 A. DeROSA

2 other, you know -- I guess those are the only two  
3 methods.

4               Q.        Okay.  This is interesting.  So let's  
5 take these one at a time.

When you say an analysis of the behavior, tell me what you mean.

8           A.     Well, it could be done in a number of  
9 ways. I mean my mother, who is not technical at  
10 all, could perform some of that type of behavior  
11 analysis and observe what happens based on what  
12 the app is -- what kind of messages the app is  
13 sending. Or it could be, on the other end of the  
14 spectrum, something much more in-depth; actually  
15 reverse engineering the application, for example.

16 Q. Okay. So I asked a poor question and  
17 I apologize. Let me ask a better question.

18                   In order to determine at any  
19 particular time whether a user has infringed  
20 Claim 1, I believe you have now said we have to  
21 look not only at the user's behavior in the past  
22 but also at the user's potential behavior in the  
23 future. Correct?

24 A. Well, I'm uncomfortable using the word  
25 "user," because apps, and specifically malicious

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1 A. DeROSA

2 or fraudulent apps, can act without any input or  
3 influence of the user. So I would want to talk a  
4 little bit more about that term.

5 Q. So I'm -- I'm asking about the same  
6 hypothetical that I asked about before where the  
7 user sends 6,000 messages. Okay? So we'll go  
8 back to that hypothetical.

9                   In my hypothetical, the user sends  
10        6,000 messages and they're all diverted. You  
11       recall this; correct?

12 A. Yes.

13 Q. And at the moment the user sends  
14 message 6,000, right, it is unknown whether or  
15 not messages 1 through 6,000 are infringing  
16 because message 6,001 could be not diverted and  
17 that, in your opinion, would render messages 1  
18 through 6,000 all infringing; correct?

19 MR. TICE: Objection; form.

20                   THE WITNESS: I guess I would say it's  
21                   not just the behavior that can cause an  
22                   infringement. In fact, it could be that the  
23                   6,000 could be infringing if you were to  
24                   review their source code and how it  
25                   operates. You would see that even, you

1 A. DeROSA

2 know -- even after ten messages, or after  
3 two messages, it would be infringing because  
4 of the logic that's built into the code.

5 BY MR. WARREN:

6 Q. I promise I will get to that. And I  
7 have stuck a pin in that issue. But you said  
8 there were two ways to evaluate; one was behavior  
9 and one was source code. I promise you that we  
10 will get to source code, but we're not there yet.  
11 I'm still trying to understand how you would  
12 evaluate infringement based on behavior. Okay?

13 So if I understand correctly what  
14 you've said before, what I believe you said was  
15 that if a user sends 6,000 messages and none of  
16 them -- withdraw that.

17 I believe you said before that if a  
18 user sends 6,000 messages and they're all  
19 diverted, and then the user throws out the  
20 device, that user has not infringed. Correct?

21 A. You mean the maker of the application  
22 didn't infringe? Is that what you're asking?

23 Q. I asked the question that I asked.

24 A. I'm not sure that --

25 MR. TICE: Object to the form.

1 A. DeROSA

2 THE WITNESS: I'm not sure that users  
3 can infringe a patent. It's the people who  
4 make the device that are infringing the  
5 patent.

6 BY MR. WARREN:

7 Q. Okay. Let me ask the question a  
8 different way to avoid this issue.

9 If a user -- we talked previously  
10 about how a user can have a communication  
11 terminal under the '923 patent; correct?

12 A. Yes.

13 Q. Okay. And I believe we agreed that if  
14 the user uses the communication terminal to send  
15 messages from an application program towards the  
16 communication network and the communication  
17 terminal diverts all of those messages to a  
18 controlling entity, and the controlling entity  
19 then, based on the message, controls whether the  
20 application program behaves in a predetermined  
21 manner, okay, that no infringement has occurred  
22 if they're all diverted. Correct?

23 A. Let me think about that for a second.

24 I guess I would say it's not possible  
25 to know just based on a given sample of observing

1 A. DeROSA

2 what an app does. So I may want to go back and  
3 revisit what we discussed as I'm thinking about  
4 it a little bit more.

5 Q. Well, let's do that. So in my first  
6 hypothetical, a user uses a communication program  
7 to send a message -- withdraw that.

8 A user of a communication terminal  
9 sends a message from an application program  
10 towards a communication network. The  
11 communication terminal diverts the message to a  
12 controlling entity and, based on the message, the  
13 controlling entity determines whether the  
14 application program behaves in a predetermined  
15 manner.

16 Are you with me so far?

17 A. Yes.

18 Q. The user has sent one message. Is it  
19 possible that message has been diverted? Is it  
20 possible to determine whether infringement has  
21 occurred?

22 A. No.

23 Q. Is it ever possible to determine  
24 whether infringement has occurred based simply on  
25 whether or not a particular message has been

1 A. DeROSA

2 diverted?

3 A. Maybe with enough analysis.

4 Q. But it's not always possible; correct?

5 A. Correct.

6 Q. What would you have to do to determine

7 whether infringement has occurred in my

8 one-message hypothetical?

9 A. You would have to understand how the  
10 device was operating, and you would have to kind  
11 of identify the logic in that communication  
12 terminal in order to understand if there was  
13 diverting and controlling being done.

14 Q. Okay. And so do I correctly  
15 understand you to be saying that if a user is  
16 using a communication terminal and that user  
17 sends a single message from an application  
18 program toward a communication network and then  
19 the communication terminal diverts that message  
20 to a controlling entity, and the controlling  
21 entity controls whether an application program  
22 behaves in a predetermined manner, in that  
23 hypothetical, in order to determine whether  
24 infringement occurs you would have to look at  
25 whether the device was capable of sometimes

1 A. DeROSA

2 diverting and sometimes not diverting. Am I  
3 understanding that correctly?

4 A. Correct.

5 Q. Okay. And so to determine whether a  
6 person has infringed Claim 1, one must consider  
7 not only the steps of the method being performed  
8 but also the source code being used to perform  
9 that method; correct?

10 MR. TICE: Objection; form.

11 THE WITNESS: No, you would not need  
12 the source code.

13 BY MR. WARREN:

14 Q. Okay. So in order to -- withdraw  
15 that.

16 To determine whether a person has  
17 infringed Claim 1 of the '923 patent, one must  
18 consider not only the steps of the method being  
19 performed but also the apparatus being used to  
20 perform that method; correct?

21 A. Yes.

22 MR. WARREN: Okay. I have no further  
23 questions.

24 MR. TICE: Let's take a quick break.

25 MR. WARREN: You're going to cross or

1 A. DeROSA

2 you're not going to cross? We're not going  
3 to take a break.

4 MR. TICE: We're going to take a  
5 break, and then we may have questions or we  
6 may not.

7 MR. WARREN: Okay. Well, Jerry, I  
8 want you to confirm you're not going to  
9 speak with the witness during this break.

10 MR. TICE: Sure, that's fine.

11 MR. WARREN: Okay. So, Mr. DeRosa,  
12 after this break, I'm going to ask if you  
13 had any conversations with your counsel and  
14 you are going to answer that question "No."  
15 Do you understand me?

16 THE WITNESS: I will answer  
17 truthfully.

18 MR. TICE: We're going off the record  
19 now.

20 MR. WARREN: But, Jerry, I've got your  
21 agreement that you're not going to  
22 communicate with him during this break,  
23 because otherwise I don't consent to going  
24 off the record.

25 MR. TICE: Yes, I agree. I don't know

1 A. DeROSA

2 what else you want us to say. We're going  
3 off the record.

4 MR. WARREN: Okay. Thank you. Wait.  
5 Ten minutes?

6 Mr. DeRosa, they didn't say, so let's  
7 just say ten minutes.

8 THE WITNESS: Okay.

9 THE VIDEOGRAPHER: This marks the end  
10 of Media Number 1 in the deposition of  
11 Anthony DeRosa. The time is 10:38. We are  
12 off the record.

13 (Recess taken.)

14 THE VIDEOGRAPHER: This is the start  
15 of Media Number 2 in the deposition of  
16 Anthony DeRosa. The time is 10:47.

17 MR. TICE: Welcome back, Mr. DeRosa.  
18 This is Jerry Tice. I have a few follow-up  
19 questions for you regarding your testimony  
20 here today.

21 EXAMINATION

22 BY MR. TICE:

23 Q. First, I would like to refer you to  
24 the '923 patent. I would like you to take a look  
25 at Column 9, Claim 1. And let me know when you

1 A. DeROSA

2 get there.

3 A. I have it here.

4 Q. Do you see in Claim 1, right beside  
5 the 1 there is a portion of text that says: "A  
6 method for controlling application programs in a  
7 communication terminal, the method comprising..."

8 Do you see that?

9 A. Yes.

10 MR. WARREN: Objection to the form.

11 Sorry. Mr. DeRosa, you've got to wait  
12 for a second to let me get the objections  
13 out.

14 Object to the form.

15 BY MR. TICE:

16 Q. Under this portion, there are one,  
17 two -- three different paragraphs, all separated  
18 by a semicolon. Do you see that?

19 A. I do.

20 MR. WARREN: Objection to form.

21 BY MR. TICE:

22 Q. In the first paragraph --

23 MR. WARREN: I'm sorry. Did the  
24 witness answer? I didn't hear him answer.

25 MR. TICE: Sorry, Matt. He said "I

1 A. DeROSA

2 do."

3 Mr. Reporter, could you please read  
4 back the last answer.

5 (The record was read back by the  
6 reporter as follows:

7 "Question: Do you see that?

8 "Answer: I do." )

9 MR. WARREN: And, John, you got my  
10 objection in there too; right?

11 THE REPORTER: Yes, I did.

12 MR. WARREN: Mr. DeRosa, you've got to  
13 slow down a little bit because I do want to  
14 get the objections out, and we do want a  
15 clean transcript.

16 Sorry, Jerry. I interrupted you.

17 BY MR. TICE:

18 Q. Mr. DeRosa, just pause for a second  
19 after a question so Mr. Warren can object if he  
20 would so like to.

21 So going back to the questioning,  
22 Mr. DeRosa, this first paragraph, it begins with  
23 the word "sending." Do you see that?

24 MR. WARREN: Object to the form.

25 THE WITNESS: Yes.

1 A. DeROSA

2 BY MR. TICE:

3 Q. And the second paragraph under Claim 1  
4 begins with the word "diverting." Do you see  
5 that?

6 MR. WARREN: Object to the form.

7 THE WITNESS: I do.

8 BY MR. TICE:

9 Q. And then looking at the third  
10 paragraph, it says "based on the message  
11 controlling." Do you see that language?

12 MR. WARREN: Object to the form.

13 THE WITNESS: Yes.

14 BY MR. TICE:

15 Q. Do you understand that each of these  
16 paragraphs are limitations of Claim 1?

17 MR. WARREN: Object to the form.

18 THE WITNESS: I do understand that.

19 BY MR. TICE:

20 Q. And to practice the claim, the claimed  
21 method, all of these limitations -- or I believe  
22 Mr. Warren previously referred to them as  
23 steps -- they need to be practiced; correct?

24 MR. WARREN: Object to the form.

25 THE WITNESS: That was my

1 A. DeROSA

2 understanding.

3 BY MR. TICE:

4 Q. I would like you to look at this --  
5 the first limitation that says "sending  
6 messages." Do you see that?

7 MR. WARREN: Object to the form.

8 THE WITNESS: Yes.

9 BY MR. TICE:

10 Q. And this requirement of sending  
11 messages, is it met if only one message is sent?

12 MR. WARREN: Object to the form.

13 THE WITNESS: No. It's plural.

14 BY MR. TICE:

15 Q. I would like you to take a look at the  
16 diverting step. Therein it says "a message of  
17 the messages." Do you see that?

18 A. I do.

19 MR. WARREN: Object to the form.

20 Object to the form.

21 BY MR. TICE:

22 Q. And you would agree that the sending  
23 step is different than the diverting step;  
24 correct?

25 MR. WARREN: Object to the form.

1 A. DeROSA

2 THE WITNESS: I would, yes.

3 BY MR. TICE:

4 Q. And in the diverting step, it includes  
5 the phrase of your opinion, "a message of the  
6 messages"; right?

7 MR. WARREN: Object to the form.

8 THE WITNESS: Can you repeat the  
9 question?

10 BY MR. TICE:

11 Q. I'm referring to this language right  
12 after "diverting." It says "a message of the  
13 messages."

14 And my question is: This language, "a  
15 message of the messages," that is the claim terms  
16 that you analyzed in your opinion; correct?

17 MR. WARREN: Object to the form.

18 THE WITNESS: Yes.

19 BY MR. TICE:

20 Q. Now, earlier you testified that the  
21 sending step requires sending multiple messages  
22 because of the plural use of the word "message";  
23 correct?

24 MR. WARREN: Object to the form.

25 THE WITNESS: Yes. I guess I can see

1 A. DeROSA

2 that I made a mistake. I guess I would say  
3 when Matthew previously asked me if it just  
4 fit -- if an application had existed that  
5 only sends one message would fit, that  
6 doesn't actually meet this first step where  
7 it does require sending messages.

8 BY MR. TICE:

9 Q. Okay. Thank you for that  
10 clarification.

11 I would like to discuss now the  
12 "diverting a message of the messages" phrase of  
13 Claim 1. Do you see that?

14 A. I do.

15 MR. WARREN: Object to the form.

16 BY MR. TICE:

17 Q. Could the claim be practiced if one  
18 message is diverted?

19 MR. WARREN: Object to the form.

20 THE WITNESS: Yes.

21 BY MR. TICE:

22 Q. Mr. DeRosa, have you performed an  
23 infringement analysis for any devices or products  
24 related to the '923 patent?

25 A. No.

1 A. DeROSA

2 MR. WARREN: Object to the form.

3 BY MR. TICE:

4 Q. And do you offer any opinions of  
5 whether any devices infringe the '923 patent?

6 MR. WARREN: Object to the form.

7 THE WITNESS: That was not in my scope  
8 of work here.

9 MR. TICE: Thank you, Mr. DeRosa.

10 I pass the witness.

11 EXAMINATION

12 BY MR. WARREN:

13 Q. Mr. DeRosa, since I last asked you  
14 questions, have you communicated with anybody  
15 else?

16 A. No.

17 Q. Do you want to change any of the  
18 answers that you gave during my examination?

19 A. I do. I believe I was mistaken, and I  
20 want to make sure that I'm not misrepresented in  
21 my testimony here. So, you know, when I was here  
22 answering your questions, I should have read more  
23 carefully before answering some of them, and I  
24 might want to change what I said.

25 Q. What do you want to change?

1 A. DeROSA

2 A. Well, it would appear that the  
3 fictitious scenario that you presented where an  
4 application exists and it only sends one message  
5 and then the user throws it in the garbage, that  
6 wouldn't even fit in this scenario here because  
7 Claim 1 does say a scenario does require sending  
8 more than one message or -- yeah, sending one or  
9 more messages.

10 Q. I also asked you about two messages;  
11 correct?

12 A. I do remember a fictitious scenario  
13 where an app sends two messages.

14 Q. And your answer with regard to that  
15 doesn't change; correct?

16 A. Can someone tell me what I said? I  
17 don't know if the court reporter can. I would  
18 like to think about it again.

19 Q. So you don't recall your answer from  
20 45 minutes ago?

21 MR. TICE: Objection; form.

22 THE WITNESS: I guess what I don't  
23 recall is the specific wording. In the  
24 specific wording, I might have glossed over  
25 some aspect of the question.

1 A. DeROSA

2 BY MR. WARREN:

3 Q. Okay. Do you recall discussing 6,000  
4 messages?

5 A. I do.

6 Q. Do any of your answers change with  
7 regard to 6,000 messages?

8 A. I believe the question was if an app  
9 sends 6,000 messages and none of them are  
10 diverted, and then another message is sent that  
11 is diverted, does that infringe the patent. I  
12 guess I might want to preface all of this with I  
13 was narrowly looking at what it means for the  
14 "message of the messages" and what that means.

15 I wasn't -- I wasn't conjuring up  
16 fictitious examples and trying to think through  
17 and examine whether they may or may not infringe.

18 That was beyond what I was asked to do.

19 Q. Mr. DeRosa, your testimony previously  
20 to me was under oath; correct?

21 A. Yes.

22 Q. And you take that seriously; correct?

23 A. I do.

24 Q. And you answered those questions  
25 truthfully and to the best of your ability;

1 A. DeROSA

2 correct?

3 A. Yes.

4 Q. And you told me that you were a person  
5 of ordinary skill in the art; correct?

6 A. Yes.

7 Q. And you defined a person of ordinary  
8 skill in the art as someone who could understand  
9 the '923 patent; correct?

10 A. Yes.

11 Q. So when you gave the answers that you  
12 gave to me previously, you were giving me those  
13 answers as a person of ordinary skill in the art  
14 who can, by your own definition, understand the  
15 '923 patent; correct?

16 A. Yes.

17 Q. Okay. Other than with regard to the  
18 hypothetical situation where only one message is  
19 sent over the lifetime of the device, do you want  
20 to change any of the answers that you gave me  
21 under oath previously?

22 A. Towards the end of our discussion we  
23 were getting at a question of can you determine  
24 whether or not something infringes and how you  
25 might be able to determine that. And I want to

1 A. DeROSA

2 make sure that I'm representing my opinion

3 truthfully and honestly and clearly -- emphasis

4 on clearly.

5 MR. WARREN: Mr. Reporter, can you

6 read back the question that I asked, please.

7 MR. TICE: I'm sorry. Mr. DeRosa,

8 were you finished?

9 MR. WARREN: Oh, I thought you were.

10 THE WITNESS: I guess I would love the

11 chance to just clarify those questions you

12 asked me about the 6,000 messages just to

13 make sure that my words aren't

14 misrepresented.

15 BY MR. WARREN:

16 Q. What is it that you said incorrectly

17 under oath previously?

18 A. Well, it's the question of can you

19 tell if something infringes based on observing N

20 number of messages.

21 Q. What was incorrect about your previous

22 answer under oath?

23 MR. TICE: Objection; form.

24 THE WITNESS: I don't know that

25 anything was incorrect. I would just -- I'm

1 A. DeROSA

2 thinking back and wondering if -- if I said  
3 that you can or cannot determine based on  
4 observation or if you need to observe  
5 something more internally about the  
6 application.

7 BY MR. WARREN:

8 Q. Do you stand by your previous  
9 testimony under oath, or do you withdraw your  
10 previous testimony under oath and state that it  
11 was incorrect?

12 A. I stand by it.

13 Q. And so what is it that you want -- if  
14 you stand by your previous testimony under oath,  
15 what is it that you want to clarify now?

16 A. Well, it's an interesting question to  
17 ask if you can tell if something infringes based  
18 on N number of messages. I didn't fully think  
19 about that -- that particular scenario and that  
20 issue. I think there's some interesting --  
21 there's some interesting answers to that  
22 question, I guess.

23 Q. And are there interesting answers to  
24 that question that you didn't previously give  
25 under oath?

1 A. DeROSA

2 A. Well, would it be possible to just  
3 read back the questions where we talked about the  
4 6,000 messages?

5 Q. I'm asking you what you said wrong  
6 before. And what I'm hearing is nothing, but I  
7 want to do it again anyway. Is that correct?

8 MR. TICE: Objection; form.

9 THE WITNESS: No, that doesn't seem  
10 fair. I just want to be sure that the  
11 record records what I actually believe at  
12 this moment during this deposition.

13 BY MR. WARREN:

14 Q. And what is concerning you about those  
15 questions? That's what I want to understand.  
16 Clearly what is concerning you is you think you  
17 said something wrong but you don't know what it  
18 is.

19 So what is concerning you?

20 A. The question of whether or not you can  
21 tell if a technology -- in this regard to  
22 Claim 1 -- the question of whether you can tell  
23 based on some number of message whether it  
24 infringes or not.

25 Q. And you previously answered that if a

1 A. DeROSA

2 user sends 6,000 messages and none of them are  
3 diverted but the patent is otherwise met, that  
4 you cannot tell if those 6,000 messages are  
5 infringing. Correct?

6 A. You would not be able to make a  
7 determination one way or the other, correct.

8 Q. And was there anything incorrect about  
9 that testimony?

10 A. No, I don't think so. If -- I don't  
11 think so.

12 Q. Okay. Is there anything you want to  
13 clarify about that testimony?

14 A. Yeah. I would just say in this  
15 example where you have some technology that sends  
16 6,000 messages and you for a fact know that none  
17 of them were diverted, which that opens -- I  
18 mean, an end user like my mother, for example,  
19 may not be able to tell whether something was  
20 diverted or not. But let's say that someone knew  
21 that they were not diverted. It's still, I  
22 think, unclear whether or not the patent was  
23 infringed. You would need more information.

24 Q. Okay. So what I understand you to be  
25 saying -- withdraw that.

1 A. DeROSA

2 I'm not asking about your mother's  
3 understanding as a potential user of a  
4 communication terminal. I'm asking about your  
5 understanding as a person of ordinary skill who  
6 can understand the '923 patent.

7 Do you understand that?

8 A. Okay. So only think about in terms of  
9 what I know. Yes.

10 Q. I'm not -- I don't know what that  
11 answer is. You brought your mother into this and  
12 you said she might not know as a user. I want to  
13 make sure you understand I'm not asking about  
14 what the user knows. Okay?

15 I'm asking about your understanding of  
16 the patent as a person of ordinary skill in the  
17 art. Do you understand that?

18 A. Yes.

19 Q. And that was what I was asking about  
20 before when we talked about 6,000 messages;  
21 correct?

22 A. Yes.

23 Q. Okay. And in that discussion you  
24 explained, and have now re-explained, that if a  
25 user sends 6,000 messages, all of which is

1 A. DeROSA

2 diverted, or none of which is diverted, then you  
3 can't tell at that point whether those 6,000  
4 messages are infringing based on the information  
5 that you have; correct?

6 A. Well, the user doesn't infringe and  
7 the message doesn't infringe, but the technology,  
8 the device, the technology of the device is what  
9 may or may not infringe. And yes, I would agree  
10 you cannot tell.

11 Q. And so the only way to tell whether a  
12 user infringes Claim 1 by sending a message on a  
13 communication terminal toward a network is by  
14 understanding how that communication terminal  
15 works, understanding the apparatus that is  
16 sending the message; correct?

17 MR. TICE: Objection; form.

18 THE WITNESS: I don't know if the word  
19 "apparatus" means something technically,  
20 legally, in legalese work. But you would  
21 have to understand the inner workings of the  
22 device to identify that diversion is being  
23 done on one or more of the messages.

24 BY MR. WARREN:

25 Q. So I'll try to use terms that don't

1 A. DeROSA

2 seem loaded to you.

3 What matters is not whether or not a

4 particular message is diverted. What matters is

5 whether the communication terminal has the

6 capability of diverting some but not all of the

7 messages; correct?

8 MR. TICE: Objection; form.

9 THE WITNESS: Well, I mean, the claim

10 said "diverting." So it has to be doing

11 some type of diverting.

12 MR. WARREN: Mr. Reporter, can you

13 read back my question, please.

14 (The record was read back by the

15 reporter as follows:

16 "Question: So I'll try to use terms

17 that don't seem loaded to you.

18 "What matters is not whether or not a

19 particular message is diverted. What

20 matters is whether the communication

21 terminal has the capability of diverting

22 some but not all of the messages; correct?" )

23 THE WITNESS: The only reason I'm

24 hesitating is "has the capability." I'm

25 thinking of a case where -- not the

1 A. DeROSA

2 technical word case, but I'm thinking of an  
3 example where maybe the device manufacturer  
4 does ship something with a capability but  
5 always has the capability turned off and  
6 never makes use of it. So in that case, I  
7 don't think it would be infringing if it  
8 wasn't actually ever doing it.

9 So has the capability and also enables  
10 the capability or makes use of that  
11 capability.

12 BY MR. WARREN:

13 Q. So in order -- withdraw that.  
14 In order to determine whether a user  
15 sending a particular message from a communication  
16 terminal infringes Claim 1, you must examine not  
17 only whether or not the device has the capability  
18 of diverting a message or not diverting a  
19 message, but also whether or not that capability  
20 is enabled; correct?

21 A. I mean, I think that's -- yes.

22 MR. WARREN: I have no further  
23 questions.

24 MR. TICE: Thank you, Mr. DeRosa. I  
25 have no questions.

1 A. DeROSA

2 The witness will read and sign.

3 THE WITNESS: What was that? The  
4 witness will what?

5 MR. TICE: Sorry, Mr. DeRosa. It's  
6 just a legal formality. It's not a question  
7 to you.

8 THE WITNESS: Okay.

9 THE VIDEOGRAPHER: This is the end of  
10 Media Number 2 in the deposition of Anthony  
11 DeRosa. This also concludes today's  
12 deposition. The time is 11:08. We are off  
13 the record.

14 (Deposition adjourned at 11:08 a.m.)

15

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1 A. DeROSA

2 ACKNOWLEDGMENT OF DEPONENT

3  
4 I, ANTHONY DeROSA, have read or have had the  
5 foregoing testimony read to me and hereby certify  
6 that it is a true and correct transcription of my  
7 testimony with the exception of any attached  
8 corrections or changes.

9

10

11

---

12 ANTHONY DeROSA

13 [ ] No corrections

14 [ ] Correction sheet(s) enclosed

15

16 SUBSCRIBED AND SWORN TO BEFORE ME, the  
17 undersigned authority, by the witness, ANTHONY  
18 DeROSA, on this the \_\_\_\_\_ day of

19 \_\_\_\_\_, \_\_\_\_\_.  
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1 A. DeROSA

2 C E R T I F I C A T E

3

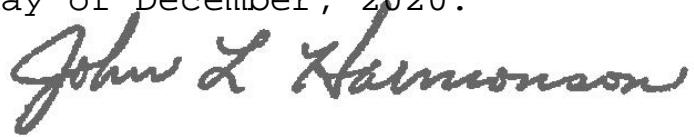
4 STATE OF MARYLAND

5 I, JOHN L. HARMONSON, a Notary Public  
6 within and for the State of Maryland, do hereby  
7 certify that ANTHONY DeROSA, the witness whose  
8 deposition is hereinbefore set forth, was duly  
9 sworn by me and that such deposition is a true  
10 record of the testimony given by such witness.

11 That before completion of the  
12 proceedings, review and signature of the  
13 transcript was requested.

14 I further certify that I am not related  
15 to any of the parties to this action by blood or  
16 marriage; and that I am in no way interested in  
17 the outcome of this matter.

18 IN WITNESS WHEREOF, I have hereunto set  
19 my hand this 31st day of December, 2020.

20   
21

22 JOHN L. HARMONSON, RPR

23 My commission expires: 08/16/21

24  
25